

DEPARTMENT OF STATE REVENUE

LETTER OF FINDINGS NUMBER: 04-0188P

Withholding Tax

For the months of January, February, March, April, & May 2002

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superceded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUE

I. **Tax Administration** – Penalty

Authority: IC 6-8.1-10-2.1(d); 45 IAC 15-11-2;

The taxpayer protests the late penalty.

STATEMENT OF FACTS

The late penalty was assessed on the late payment of monthly withholding tax returns for the months of January, February, March, April, and May 2002.

The taxpayer is a company residing in Indiana.

I. **Tax Administration** – Penalty

DISCUSSION

The taxpayer argues the late penalty should be abated as (1) the taxpayer relied on the payroll provider, and (2) the Department failed to send the filing frequency change letter to the payroll provider even though the payroll provider sent the Department a Power-of-Attorney form.

With regard to the reliance on the payroll provider, the taxpayer's payroll provider is in an agency relationship with the taxpayer, and therefore, the taxpayer is liable for the payroll provider's actions when the payroll provider acts on behalf of the taxpayer.
45 IAC 1-1-54.

With regard to the Power-of-Attorney form, the only way the Department can control a Power-of-Attorney form is for the taxpayer to be registered for EFT filing and identify
0320040188P.LOF

the taxpayer's payroll provider as the payroll contact (as determined by Department policy, the EFT Program Information Guide). The taxpayer is not registered for EFT filing. Therefore, the Department sent the filing frequency change letter to the contact of record which was the taxpayer. In addition, the filing frequency change letter informed the taxpayer to advise the taxpayer's payroll provider of the filing frequency change.

45 IAC 15-11-2(b) states, "Negligence, on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer."

The Department finds the taxpayer was inattentive of tax duties as the taxpayer failed to advise the payroll provider of the filing frequency change. Inattention is negligence and negligence is subject to penalty. As such, the Department finds the penalty proper and denies the penalty protest.

FINDING

The taxpayer's penalty protest is denied.